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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Flexibility for Delivery)	
of Communications by)	IB Docket No. 01-185
Mobile Satellite Service Providers)	
in the 2 GHz Band, the L-Band, and the)	
1.6/2.4 GHz Band)	
)	
Amendment of Section 2.106 of the)	ET Docket No. 95-18
Commission's Rules to Allocate Spectrum at)	
2 GHz for Use by the Mobile Satellite Service)	

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"),¹ by counsel, hereby responds to the Commission's request for comment on proposals submitted by two mobile satellite service ("MSS") providers and the Commission's inquiry into the use of MSS spectrum to provide terrestrial services.² Although RCA favors flexibility in use of the spectrum, the proposals

¹ RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing rural wireless service providers.

² *In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band; Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service: Notice of Proposed Rulemaking*, IB Docket No. 01-185, ET Docket No. 95-18 (rel. August 17, 2001) ("Notice"). On October 4, 2001, the FCC granted CTIA's request for an extension of time to file comments in this proceeding until October 19, 2001. On October 18, 2001, the FCC released a Public Notice (DA 01-2451) extending the due date for any filings due

offered by New ICO Global Communications Holdings, Ltd. (“ICO”) and Motient Services, Inc. (“Motient”) do not conform to the Commission’s standard of “ancillary” services and must, therefore, be rejected. In addition, to the extent that the Commission considers permitting the use of MSS spectrum to provide terrestrial services, fairness requires the assignment of spectrum through an auction process. To meet Congressional requirements and public interest demands, that auction process must incorporate appropriate Designated Entity mechanisms.

I. The Proposals of ICO and Motient do not meet the Commission’s Standard of “Ancillary” Services as Set Forth in the Notice.

In its Notice, the Commission stated that in examining approaches by which it may permit more flexible use of MSS spectrum, it “intends the term ‘ancillary’ terrestrial services to refer strictly to services provided by MSS operators that are integrated with the satellite network, use assigned MSS frequencies, and are provided for the purpose of augmenting signals in areas where the principal service signal, the satellite signal, is attenuated.”³ Further, the Commission stated that it does not intend that the term “ancillary” in this context “refer to services that differ materially in nature or character from the principal services offered by MSS providers.”⁴

ICO labels its proposed service offering as “ancillary terrestrial component” (“ATC”), but, in fact, ATC service constitutes a wholly new use of the 2 GHz MSS spectrum. As described by their proponents, the service would use a physically separate network, and would

on October 19, 2001 until October 22, 2001.

³ Notice at para. 31.

⁴ *Id.*

act as a substitute for satellite-delivered service.⁵ Accordingly, the proposed service would differ materially in nature and character from the principal services offered by MSS operators and thus would not meet the Commission's standard for ancillary as set forth in the Notice.

Like ICO, Motient proposes a separate terrestrial network that would operate in a manner similar to a cellular or PCS system, again acting as a substitute for satellite service. According to the Notice, the terrestrial component would use cellular technology and GSM wireless protocol.⁶ The subscribers would use lightweight, handheld mobile terminals that would communicate through both the satellite and the base stations.⁷ If the subscriber's satellite path is blocked, the "communications link would be sustained via the fill-in base stations."⁸

In short, both proposals would constitute a defacto reallocation of MSS spectrum to terrestrial use, replacing satellite-delivered service with terrestrial service, utilizing a physically separate network. Because the proposed services would be materially different from the licensed satellite services, this alternative use cannot be justified as "ancillary" and should, therefore, be

⁵ According to ICO's ex parte letter to Commissioner Gloria Tristani dated March 8, 2001 ("ICO Ex Parte Letter"), the proposed ATC service would utilize the 2 GHz MSS spectrum and a physically separate network to provide the service. ICO describes ATC as being a "network of ancillary terrestrial base stations" that are located on towers or rooftops "as with traditional mobile services." *Id.* It would be built upon standard CDMA infrastructure and would allow subscribers to choose "from a wide range of transceiver options, capable of operating in either ATC or satellite-only mode, depending upon coverage." *Id.*

⁶ Notice at para. 16

⁷ *Id.*

⁸ *Id.* The Notice further states that "[w]hen a user travels between the two coverage areas or between two base stations, the network control facility would hand off the user among facilities as required to sustain a continuous communications link." *Id.*

prohibited.

II. If MSS Spectrum is to be Available for Terrestrial Services, the Commission Should Reallocate the Spectrum for Terrestrial Use and Ensure its Availability To Designated Entities.

In its Notice, the Commission has requested comment on making MSS spectrum available for use by MSS licensees or other entities to provide terrestrial services, either in conjunction with MSS systems or as an alternative to terrestrial CMRS service.⁹

As RCA has demonstrated in other Commission proceedings, Designated Entities are ready and able to build out and serve rural and smaller markets, but have had difficulty in obtaining access to spectrum.¹⁰ To address this public policy void, RCA has proposed an A- and B-Block PCS “fill-in” policy similar to that which promoted the nation-wide build-out of cellular spectrum. Implementation of this policy would replace the existing “use it when you want to” policy with a “use it or lose it” alternative, ensuring use of fallow spectrum either by a Designated Entity or by the existing licensee.¹¹

Accordingly, should the Commission determine that reallocation of MSS frequencies to

⁹ Should the Commission reallocate the MSS spectrum, its assignment must be determined in compliance with Section 309 of the Communications Act of 1934, as amended, with particular attention to the provisions of Section 309(j)(3) directing the Commission to promote the “rapid deployment of technologies, products and services for the benefit of the public, including those residing in rural areas” and “ensuring that new and innovative technologies are readily accessible to the American people . . . by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women”

¹⁰ See, e.g., RCA’s Comments in WT Docket 00-230 filed February 9, 2001 at 3; Reply Comments in WT Docket 01-14 filed May 15, 2001 at 2.

¹¹ *Id.*

terrestrial allocations is warranted, licensing of this spectrum must incorporate the public policy goal of efficient spectrum utilization to ensure service to all segments of the population, including rural areas. This goal requires an auction process which affords meaningful opportunities to Designated Entities, and the institution of fill-in policies to ensure service to rural America.

III. Conclusion

MSS licensees are authorized to provide satellite service using spectrum allocated for that purpose. True “ancillary” offerings that assist in accomplishing that purpose are consistent with the Commission’s policies and should be encouraged. The ICO and Motient proposals, however, constitute a departure from authorized use of MSS spectrum, substituting for satellite-delivered service utilizing a physically separate network. Accordingly, the proposals should be rejected for failure to conform to the Commission’s standard.

Should the Commission determine that reallocation of MSS frequencies to terrestrial applications is warranted, licensing of this spectrum must conform to Section 309(j)(3) of the Communications Act, ensuring service to all segments of the population, including rural areas and utilizing an auction process which affords meaningful opportunities to Designated Entities. Further, the Commission should consider the institution of fill-in policies to ensure service to rural America.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

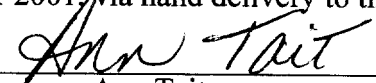
By: 

Sylvia Lesse
John Kuykendall
Its Attorneys

Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W.
Suite 520
Washington, D.C. 20037
(202) 296-8890

CERTIFICATE OF SERVICE

I, Ann Tait, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Rural Cellular Association" was served on this 22nd day of October 2001, via hand delivery to the following parties:



Ann Tait

Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, DC 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, DC 20554

Commissioner Kathleen Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, DC 20554

Commissioner Kevin Martin
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, DC 20554

Qualex International
445 12th Street, SW
Room CY-B402
Washington, DC 20554